

REMARKS

Claims 24, 31-34, 36-38, 40, 42, 44-46, 50-68, and 70 were pending for examination in the just prior Office Action, with claims 25, 35, 39, 41, and 43 having been withdrawn from consideration. Claims 62-68 having been allowed; the rest of the then-pending claim were rejected.

Claims 24, 54, and 70 are amended in this paper. Reexamination, reconsideration, and allowance of claims 24, 25, 31-46, 50-68, and 70, and the application as a whole, are now respectfully requested.

Office Action Responded to here as Non-Final

Preliminarily, applicants' counsel notes that box 2a) on the PTOL-326 Office Action Summary page was checked, indicating that the just prior Office Action was made final. The introductory paragraph at page 2 of the action, however, states that the action is a Non-Final Office Action, and none of the usual form paragraphs that one associates with final actions is present in this one. This was a first action following the applicants' filing of an RCE, moreover, and it does not appear that the criteria for a first action final action are met. Applicants therefore believe that the Final Action checkbox on the summary page was filled in erroneously, and respond in this paper accordingly, based on their determination that the just prior Office Action was in fact intended by the Office to be non-final.

Claims 62-68 Allowed

Claims 62-68 were indicated as being allowed, and those claims remain pending in the application with no amendments made to them in this paper.

Prior Art Rejections

The non-allowed, non-withdrawn claims were rejected in the just prior Office Action as either anticipated or obvious in view of the prior art, primarily U.S. Pat. No. 6,321,123 to Morris *et al.* The Examiner, noting that Morris's device can be expanded against the walls of the coronary sinus, reasoned that "The elongate body therefore is fully capable of exerting a force on

the wall that would at least ‘influence’ the size of the mitral valve annulus.” *Office Action*, at page 3.

The non-rejected independent claims (24, 54, and 70) are amended in this paper to more clearly distinguish them over *Morris* and the other cited art. Specifically, each of those claims now requires that the elongate body be configured in its second configuration to exert “a force against a wall of the coronary sinus sufficient to reduce mitral regurgitation by a therapeutically effective amount.” While the *Morris* device is surely configured to exert at least some force against the wall of the coronary sinus, there is nothing in the reference that indicates that the *Morris* device is configured to assert a force against the coronary sinus wall in a direction and in an amount “sufficient to reduce mitral regurgitation by a therapeutically effective amount,” as each of independent claims 24, 54, and 70 now require. Those independent claims thus now require a structure having a configuration that *Morris* does not disclose, and those independent claims are thus believed patentable over *Morris* and the rest of the cited art for at least that reason.

Because independent claims 24, 54, and 70, as now amended, are believed patentable over *Morris*, the same is true of claims 25, 31-46, and 50-53 (which depend from claim 24), and claims 55-61 (which depend from claim 54).¹ Reexamination, reconsideration, and allowance of claims 24, 25 31-46, 50-61, 62-68, and 70 are thus now respectfully requested.


To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 50-1225 (PVI-5813CIP1CON1) and please credit any excess fees to such deposit account.

¹ Reinstatement of previously withdrawn dependent claims 25, 35, 39, 41 and 43 is respectfully requested following the allowance of the claims from which they depend.

The Examiner, moreover, is cordially invited to telephone Applicants' undersigned counsel at the telephone number indicated below if the Examiner believes that such a call might serve in any way to advance prosecution of this application.

Date: January 29, 2010

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Michael L. Crapenhoff", is written over a horizontal line.

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